

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Willhool
31876

FILE: B-218980;.2;.3;.4 **DATE:** August 1, 1985

MATTER OF: J. Ellis Designs

DIGEST:

1. Protest that procurement should have been conducted under Brooks Act procedures for procuring architect-engineering services is untimely when filed after the date responses to the solicitation were due.
2. Protest that agency disclosed confidential price information is untimely since it was not filed within 10 working days after the protester knew or should have known of the protested actions.
3. Protester's contention that it had previously contracted for design services being procured and that agency employees led it to believe that its contracts were signed is dismissed as untimely, since it was not filed within 10 working days after the protester knew or should have known the basis for its protest.
4. GAO will not invoke "significant issues" or "good cause" exceptions to timeliness requirements where the untimely protest does not raise issues of first impression which would have widespread significance to the procurement community and no compelling reason beyond the protester's control prevented timely filing.
5. Protester's argument that procuring agency would not be prejudiced by consideration of untimely protest is rejected since timeliness provision of Bid Protest Regulations is to be strictly enforced save for exceptions involving "significant issues" and "good cause," which are not present in protest.

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J. Ellis Designs (JED) protests the award of contracts issued under purchase orders N00019-85-M-0279, -0280, -0281, and -0282, by the Department of the Navy, Naval Air Systems Command (NAVAIR), to Elena Schurter for furniture layout design services. JED contends that award of the contracts based on the lowest bid violates the procedures for the procurement of architectural and engineering services contained in the Brooks Act, 40 U.S.C. § 541, et seq. (1982), that NAVAIR disclosed confidential price information to competitors and that JED already had contracts for the design services.

We dismiss the protest as untimely.

JED contends that NAVAIR should have secured its design services through the special procedures prescribed in the Brooks Act, 40 U.S.C. § 541, et seq. (1982), for the procurement of architectural and engineering services. NAVAIR procured the design services under the small purchase procedures outlined in the Federal Acquisition Regulation (FAR), 48 C.F.R. part 13 (1984). According to NAVAIR, the contracting officer explained the source selection procedures during an April 30, 1985, meeting with potential offerors, including JED. To be timely, a protest against the procedures used in the solicitation must have been filed before responses to the solicitation were due. 4 C.F.R. § 21.2(a)(1) (1985). Since JED did not protest the procedures to our Office until May 28, 1985, after the May 3, 1985, date that responses to the solicitation were due, its protest on this issue is untimely and will not be considered. Association of Soil and Foundation Engineers, B-217408, Jan. 18, 1985, 85-1 C.P.D. ¶ 61.

JED argues that even if untimely, its protest on this issue should be considered under the significant issue exception to our timeliness rules. See 4 C.F.R. § 21.2(c) (1985). Our Office will review an untimely protest under the significant issue exception only when the matter raised is one of widespread interest to the procurement community and has not been considered on the merits in previous decisions. Association of Soil and Foundation Engineers, B-217408, supra, at 2. Whether or not Brooks Act procedures should be used in a particular procurement has been considered by this Office in prior decisions, and we have held that the question is not a significant issue. Nielson, Maxwell & Wangsgard, 61 Comp. Gen. 370 (1982), 82-1 C.P.D. ¶ 381.

It also consider untimely JED's contention that NAVAIR disclosed confidential price information. According to JED, at an April 30, 1985 meeting with bidders, a NAVAIR employee opened a notebook to answer a question that had been asked and exposed a page containing JED's previously submitted price quotes. JED contends other bidders were in a position to see the exposed figures, but NAVAIR maintains that the information could not be seen by anyone other than JED. JED also argues that its confidential bid information was disclosed several weeks earlier, before NAVAIR decided to competitively procure the design services, when JED, NAVAIR and a Navy support services contractor met to discuss the possibility of arranging payment for the design services through the support services contractor.

JED's protest of this issue on May 28, 1985, is untimely under 4 C.F.R. 21.2(a)(2) (1985) because JED did not protest within 10 working days after it knew or should have known of the basis for its protest. Harry Kahn Associates, Inc., B-216306.2, June 28, 1985, 85-1 C.P.D. ¶ 739. While JED urges that this protest issue falls under the significant issue exception, we have considered the issue of disclosure of an offeror's price information to a competitor and will not invoke the exception here. See T M Systems, Inc., B-185715, May 4, 1976, 76-1 C.P.D. ¶ 299; Swedlow Inc., 53 Comp. Gen. 139 (1973).

JED's protest that it had previously contracted for the design services and that NAVAIR employees led it to believe that its contracts were signed is also untimely. According to NAVAIR, NAVAIR informed JED on April 24, 1985, that it was going to conduct a competitive procurement for the design work for which JED allegedly already had a contract. JED thus knew or should have known the basis for its protest by April 24 and should have protested within 10 working days. 4 C.F.R. § 21.2(a)(2) (1985). Because JED did not protest this issue until May 28, 1985, its protest is untimely. Moreover, this part of JED's protest does not meet the requirements of the significant issues exception because we have considered issues of authority to contract and implied contracts in the past. See Patton Reading Services, Inc., B-215792, Jan. 8, 1985, 85-1 C.P.D. ¶ 24; TMG & Partners, Architects, B-206077.2, June 14, 1982, 82-1 C.P.D. ¶ 576.

JED also attempts to invoke the "good cause" exception to the timeliness requirements. 4 C.F.R. § 21.2(c) (1985). The good cause exception is limited to circumstances where some compelling reason beyond the protester's control

prevents the protester from filing a timely protest. Knox Manufacturing Co.--Request for Reconsideration, B-218132.2, Mar. 6, 1985, 85-1 C.P.D. ¶ 281. That is not the case here.

Finally, JED contends that NAVAIR would not be prejudiced by our consideration of its protest at this time. However, the timeliness provisions of our Bid Protest Regulations are to be enforced, absent the exceptions discussed above, and do not involve the concept of prejudice to the procuring agency. Marconi Electronics, Inc., B-218088.4, Mar. 27, 1985, 85-1 C.P.D. ¶ 368. Consequently, we reject JED's "prejudice" argument.

JED's request for a conference as provided for in our Bid Protest Regulations, 4 C.F.R. § 21.5 (1985), is denied because, where the merits of a protest are not for consideration, no useful purpose would be served by holding a conference. Logus Manufacturing Corporation, B-216775, Jan. 8, 1985, 85-1 C.P.D. ¶ 25. Similarly, JED's request for reimbursement of attorney's fees is denied since such a claim submitted in connection with an untimely protest is not for consideration. Brink Construction Co., B-219413; B-219413.2, July 11, 1985, 85-1 C.P.D. ¶ ____.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel